



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/146306

PRELIMINARY RECITALS

Pursuant to a petition filed January 02, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin in regard to Medical Assistance/Family Care, a hearing was held on April 09, 2013, at Waukesha, Wisconsin. The hearing was rescheduled twice at the request of the Petitioner before a hearing was held on April 9, 2013.

The issue for determination is whether the agency properly determined the Petitioner is no longer at a Nursing Home Level of Care for the Family Care program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Peggy Patterson
Care Wisconsin
2802 International Lane
PO Box 14017
Madison, WI 53708

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. Petitioner enrolled in the Family Care (FC) program in September 2008 and was found to be at a Nursing Home Level of Care.
3. Petitioner's diagnoses include neuropathy, stenosis and arthritis. She lives with her developmentally disabled son and an adult friend.
4. On November 10, 2011, an annual rescreen was done by the Care Wisconsin care manager. The agency concluded that the Petitioner continued to be at risk of institutionalization and met the Nursing Home Level of Care (LOC).
5. On November 30, 2012, an annual rescreen was done by the Care Wisconsin care manager. The agency concluded the Petitioner is no longer at risk of institutionalization, is eligible for Family Care but no longer meets the Nursing Home LOC.
6. On November 30, 2012, the agency notified the Petitioner in a letter that she was eligible for Family Care at a non-Nursing Home LOC.
7. A re-screen was conducted on April 8, 2013 by Care Wisconsin. The conclusion was upheld from the November 2012 rescreen that the Petitioner is not a risk of institutionalization, is eligible for Family Care but no longer meets the Nursing Home LOC.
8. On January 2, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. See, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10. Whenever the local Family Care program decides that a person is to be terminated from the program, the client is allowed to file a fair hearing request. The petitioner did so here.

In order to qualify for FC services, with certain exceptions not applicable here, a person's functioning must be such that they would otherwise require institutional care. Wis. Stat. §46.286(1)(a). Essentially, to meet the functional eligibility requirement, a person must require some sort of in-home care or therapy that reaches a level of nursing facility care. To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

I. THE DHS COMPUTERIZED SCREENING TOOL DETERMINED THAT THE PETITIONER IS NOT FUNCTIONALLY ELIGIBLE AT THE "NURSING HOME CARE LEVEL."

The Wisconsin Department of Health Services has made efforts to improve the statewide efficacy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience); who has been trained and met all requirements to do so by completing a Department sanctioned web-based training program, and have experience working with long term care consumers.

This screener asks the applicant, or a recipient at an annual review, questions about his/her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits (as occurred here) the "Functional Screen Report" for the applicant to the Department's Division of Long Term Care. The Department then treats the Long Term Functional Screen data (or "tool") by computer programming to see if the applicant/recipient meets any of the nursing levels of care.

In the implementation of the "functional screen" process, the Department employed a statistical consultant to test the use of the "tool" (the Level of Care Functional Screen form, or "LOC" form) and the reliability of the outcomes obtained in using the tool and the computer analysis program. The consultant prepared an academic report finding that the use of the functional screen resulted in a high degree of reliability and consistency. Current policy requires the Department's local agent to utilize this system. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The cross-referenced Level of Care (LOC) Functional Screen form reiterates the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities.

The Petitioner's diagnoses are not in dispute. In November, 2012, the agency determined that the Petitioner was independent with bathing (with use of grab bars and shower chair), eating, toileting, transferring, medication management and administration, money management. She required minimal assistance with dressing, mobility, meal preparation, laundry and chores. She was noted to be able to use the phone and drive an adapted vehicle. She did not require overnight supervision. No communication or cognition issues were noted. It was also noted that she had not been diagnosed with any mental health condition through the agency noted that she might be in need of some mental health services. In addition, the Petitioner was found to be independent with exercise and range of motion exercise and did not require skilled nursing assessment and intervention. The agency determined she was no longer at risk of institutionalization. When the scores of the assessment were entered into the DHS algorithm in November, 2012, the result was that the Petitioner is eligible for Family Care at the non-nursing home LOC.

The agency conducted a re-screen in April, 2013 and concluded that the Petitioner is able to bathe, eat and toilet independently. It determined she is able to manage and administer medications independently, manage money, use a phone and drive an adapted vehicle. Further, it determined that she needs minimal assistance with dressing, mobility, transfers, laundry and chores, meal preparation. She requires overnight supervision due to needing assistance in transferring out of bed. Specifically, she has problems with her left leg that make transfers out of bed difficult. She has no communication or cognition issues and no behavioral issues. She has not been diagnosed with any mental health condition though the agency noted that she may be in need of some mental health services. When the scores of the assessment were entered into the DHS algorithm in April, 2013, the result was that the Petitioner is eligible for Family Care at the non-nursing home LOC.

The two most recent screens differ from the annual rescreen done in November, 2011. At that time, the agency determined the Petitioner was independent with bathing, dressing, eating, toileting, medication administration/management and money management. It determined she required minimal assistance with mobility, transfers, meal preparation and laundry/chores. She was found to be able to use the phone and drive an adapted vehicle. She had no communication, cognition or behavioral issues though the agency determined she might be in need of some mental health services. The most significant difference in November, 2011 was the Petitioner's need for assistance 2 – 6 x/week for exercise and range of motion exercise. In addition, she required nursing assessment and interventions 1 – 3x/month. The agency noted that she required frequent contact with an RN for advice and required physical therapy and aquatherapy for leg weakness after a hospital visit.

At the hearing, the Petitioner testified that she has difficulty dressing and undressing because of spasms in her hands. She testified that she wear support hose which are difficult to get on and off. She testified that she can't sit on the bed but can sit on the toilet. She also indicated that she cannot get in and out of the tub but can wash herself at the sink. She testified that she uses a walker in and out of the home for mobility. She stated that transfers are difficult due to pain and she has a hard time getting in and out of bed but generally can do it independently. She concedes she can manage and administer her medications independently and can manage her money. She requires assistance with laundry.

In general, the Petitioner's testimony confirms the information in the LTC functional screen. As noted, the significant difference between the two recent screens and the previous screen which found the Petitioner eligible at a nursing home LOC was the Petitioner's need in November, 2011 for assistance with exercise and range of motion exercise and the need for RN intervention. There was testimony at the hearing from the agency that home health agency services were offered to the Petitioner 1x/week for some additional services but the Petitioner refused the services. There was also evidence produced that the Petitioner was non-compliant with physical therapy in the past so services were discontinued.

II. INDEPENDENTLY OF THE DHS LOC ALGORITHM, I CONCLUDE THAT THE PETITIONER DOES NOT MEET THE COMPREHENSIVE FUNCTIONAL CAPACITY LEVEL AT THIS TIME.

Independently of the DHS computerized result, the care level can be analyzed pursuant to the standards for "comprehensive functional capacity level" in the state code. In code, the verbally expressed standard, as opposed to a computer algorithm, for the requisite level of care is as follows:

DHS 10.33 Conditions of functional eligibility.

...

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY. (a) Determination. Functional eligibility for the family care benefit shall be determined pursuant to s. 46.286 (1), Stats., and this chapter, using a uniform functional screening prescribed by the department. To have functional eligibility for the family care benefit, the functional eligibility condition under par. (b) shall be met and, except as provided under sub. (3), the functional capacity level under par. (c) or (d) shall be met.

(b) Long-term condition. The person shall have a long-term or irreversible condition.

(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code §DHS 10.33(2)(a)-(c) (November 2009).

The Petitioner needs occasional minimal assistance with three ADLs: mobility, transfers and dressing. She requires ongoing assistance with two IADLs: meal preparation and laundry/chores. Based on the testimony and evidence presented, I cannot conclude that the level of assistance required by the Petitioner places her at risk of institutionalization at this time. Therefore, I find that the agency properly determined the Petitioner is eligible for Family Care at a non-nursing home LOC.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner is eligible for Family Care at a non-nursing home LOC.

THEREFORE, it is ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

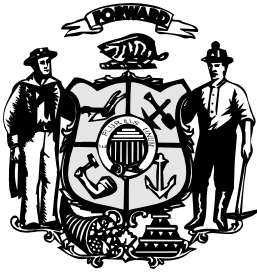
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of May, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 20, 2013.

Care Wisconsin
Office of Family Care Expansion